

REMARKS

This Application has been carefully reviewed in light of the Office Action dated August 5, 2009 (“Office Action”). Claims 1-11, 13-16, 18-36, and 38-54 are pending in the application. In the Office Action, the Examiner rejects Claims 1-11, 13-16, 18-36, and 38-54. Applicants herein amend Claims 26, 41, and 52. Applicants herein cancel Claim 50. Applicants do not admit that any amendments are necessary due to the prior art. Applicants traverse the rejections and respectfully request reconsideration and allowance of all pending claims.

Objections to Specification

The Office Action objects to the Specification under 37 C.F.R. 1.75(d)(1) with respect to Claim 51. In particular, the Office Action asserts that the Specification does not provide antecedent basis for the “network device” recited in Claim 51. Without acquiescing to this assertion, Applicants note that the Specification is herein amended to insert the following paragraph at page 4, line 9 of the Specification:

In some embodiments, a network device may comprise a receiving query section for receiving a query sent by a caller node to a plurality of nodes on a network. The network device may further comprise a list processing section for monitoring responses from other nodes to the query and maintaining a list of nodes which responded to the query.

Support for this amendment may be found on at least page 30, lines 1-5 of the Specification. Applicants respectfully note that the “claims as filed in the original Specification are part of the disclosure.” *In re Brenno*, 768 F.2d 1340, 226 U.S.P.Q. 683 (Fed. Cir. 1985); M.P.E.P. § 2163. Because the Specification, as amended, provides antecedent basis for the “network device” recited in Claim 51, Applicants respectfully request that the objection to the Specification be withdrawn.

Claim Rejections - 35 U.S.C. § 112

The Office Action rejects Claim 52 under 35 U.S.C. § 112, second paragraph. In particular, the Office Action asserts that there is insufficient antecedent basis for the “Distributed Query” recited in Claim 52. (Office Action, p. 3). Without admitting to this assertion, Applicants respectfully submit that Claim 52, as amended, provides sufficient

antecedent basis for the “Distributed Query.” Accordingly, Applicants respectfully request reconsideration and allowance of Claim 52.

Claim Rejections - 35 U.S.C. § 101

The Office Action rejects Claims 26, 31, 41, 50, and 52 under 35 U.S.C. § 101. In particular, the Office Action asserts that these claims are directed to non-statutory subject matter. (Office Action, p. 2). Without acquiescing to this assertion, Applicants respectfully submit that these claims, as amended, are directed to patentable subject matter. The Federal Circuit recently held that an applicant may show that a claim "satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article." *In re Bilski*, 545 F.3d 943, 961, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008). Amended Claims 26, 31, 41, and 52 are tied to one or more machines. For example, amended Claim 26 recites “a server for posing a query to a plurality of client nodes on the network, the *server comprising a computer* and the query comprising a delay constant.” (Emphasis added). As another example, amended Claim 41 recites “determining whether the node has a lowest address in the network, the *node comprising a machine* in the network.” (Emphasis added). Thus, amended Claims 26, 31, 41, and 52 are tied to one or more machines. Accordingly, these claims, as amended, satisfy the requirements of 35 U.S.C. § 101. Therefore, Applicants respectfully request reconsideration and allowance of Claims 26, 31, 41, and 52.

Section § 103 Rejections

The Office Action rejects Claims 1-4, 5-11, 13-15, 21-29, 30-36, 38-40, 46, 47, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over *Gunn* in view of *Tobol*. Applicants respectfully traverse these rejections.

The *Gunn-Tobol* combination fails to teach, suggest, or disclose each element of Claim 1. For example, the *Gunn-Tobol* combination fails to teach, suggest, or disclose “calculating a delay period by at least multiplying the delay constant by at least a portion of a network address associated with the at least one node” as recited in Claim 1. The Office Action relies on *Tobol* for this element of Claim 1. (Office Action, p. 5). The cited portion of *Tobol* describes a procedure by which network devices may bid to become a bus master. (*Tobol*; col. 10, ll. 37-42). In particular, the cited portion of *Tobol* states:

If the device which failed was the current bus master, then all remaining devices wait a period of time equal to (their device address plus three) multiplied by the maximum round trip delay time through the network multiplied by two. After waiting for this amount of time, the procedure for bidding to become a master is invoked.

Id. Thus, *Tobol* discloses “a period of time equal to (their device address plus three) multiplied by the maximum round trip delay time through the network multiplied by two.” *Id.* The multiplication in *Tobol* does not teach, suggest, or disclose the multiplication recited in Claim 1. In particular, Claim 1 recites “multiplying the delay constant by at least a portion of a network address.” Claim 1 further recites that “the delay constant” is comprised in the “query sent from a caller node.” Thus, according to Claim 1, the “delay period” is calculated by at least multiplying the “delay constant” comprised in the “query sent from a caller node” by “at least a portion of a network address associated with the at least one node.” The cited portion of *Tobol* does not teach, suggest, or disclose multiplying anything by a “delay constant” comprised in “a query sent from a caller node” as recited in Claim 1. The cited portion of *Gunn* fails to cure this deficiency of *Tobol*. Accordingly, the *Gunn-Tobol* combination fails to teach, suggest, or disclose “calculating a delay period by at least multiplying the delay constant by at least a portion of a network address associated with the at least one node” as recited in Claim 1. Because the *Gunn-Tobol* combination fails to teach, suggest, or disclose this element of Claim 1, the rejection is improper. For at least this reason, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependents.

The Office Action rejects Claims 6, 21, 26, 31, 46-47, 49, and 51-52 based on rationale that is similar to that used to reject Claim 1. Accordingly, for reasons analogous to those stated above with respect to Claim 1, Applicants respectfully request reconsideration and allowance of Claims 6, 21, 26, 31, 46-47, 49, and 51-52 and their respective dependents.

Claims 16, 18-20, 41-45, 48, 53, and 54

The Office Action rejects Claims 16, 18-20, 41-45, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Gunn* in view of *Engdahl*, *Tobol*, and *Novaes*. The Office Action rejects Claims 53 and 54 under 35 U.S.C. § 103(a) as being unpatentable over *Gunn* in view of *Tobol* and *Torres*. Applicants traverse these rejections.

Claim 16 is allowable because the cited references fail to teach, suggest, or disclose each claim element. For reasons analogous to those stated above with respect to Claim 1, *Gunn* and *Tobol* fail to teach, suggest, or disclose a “delay constant” and a “delay period calculated by at least multiplying the delay constant by at least a portion of a network address associated with the node” as recited in Claim 16. This deficiency of *Gunn* and *Tobol* is not cured by the cited portions of *Engdahl*, *Novaes*, or *Torres*. Because the cited references fail to teach, suggest, or disclose each element of Claim 16, Applicants respectfully request reconsideration and allowance of Claim 16 and its dependents.

In rejecting Claims 41 and 48, the Office Action employs the same rationale used to reject Claim 16. Accordingly, for reasons analogous to those stated above with respect to Claim 16, Applicants respectfully request reconsideration and allowance of Claims 41 and 48 and their respective dependents.

No Waiver

All of Applicants’ arguments and amendments are without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicants are sufficient to overcome the rejections.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Justin N. Stewart, Attorney for Applicants, at the Examiner's convenience at (214) 953-6755.

Applicants believe that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTT S L.L.P.
Attorneys for Applicants



Justin N. Stewart
Reg. No. 56,449

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CORRESPONDENCE ADDRESS:

at Customer No.

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